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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re CHRISTOPHER E., a Person Coming  
Under the Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

H.E.,

Defendant and Appellant.

F072525

(Super. Ct. No. 13CEJ300267-1)

**OPINION**

APPEAL from an order of the Superior Court of Fresno County. Mary Dolas,  
Judge.

Janette Freeman Cochran, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Daniel C. Cederborg, County Counsel, and Brent C. Woodward, Deputy County  
Counsel, for Plaintiff and Respondent.

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At a hearing held pursuant to Welfare and Institutions Code section 366.26,<sup>1</sup> the court terminated the parental rights of H.E. (mother) with respect to her son Christopher. Mother contends the court erred when it found the adoption assessment report adequate and when it failed to find the beneficial parent-child relationship exception to adoption applicable. We affirm.

#### STATEMENT OF THE FACTS AND CASE

Christopher was born in February 2012, when mother was 17 years old. He came to the attention of the Fresno County Department of Social Services (department) on September 6, 2013, when police placed a protective hold on him following an incident in which mother stabbed her boyfriend with a screwdriver. At the time, mother had visible bruises on her face, including on her lip and eyes.

A section 300 petition, filed September 10, 2013, alleged Christopher was at substantial risk of harm because mother exposed him to ongoing domestic violence between mother and her boyfriend, Carlos Z. The court detained Christopher and ordered supervised visits for mother and father.<sup>2</sup>

At jurisdiction October 9, 2013, mother submitted on the petition, which was found true. The court gave the department discretion for unsupervised, liberal visits with mother upon written notice to all counsel/parties. Mother was advised by the social worker that the department would be concerned about placing Christopher with mother if she continued her relationship with Carlos Z. Mother said she understood.

At disposition February 11, 2014, Christopher was declared a dependent of the court and removed from mother's custody. Mother and father were provided reunification services, including parenting classes and substance abuse and domestic violence evaluations and recommended treatment.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Father, Justin M., is not a party to this appeal.

The July 2014 report prepared in anticipation of the six-month review hearing stated Christopher continued in foster care. Mother completed seven of 14 parenting classes and, after positive drug tests, was in drug treatment, but her attendance was poor. Several referrals were made for mother to attend a 52-week batterer's intervention program, but mother failed to complete intake. Mother was attending ongoing individual therapy and making progress. Mother's visits with Christopher vacillated between third-party visits and supervised visits because she did not consistently show up for visits.

At the six-month review July 23, 2014, the court continued reunification services for mother and father.

An investigator with Fresno Child Advocates contacted mother in August 2014, and, after numerous unsuccessful attempts, was able to speak to her and view her home. The investigator found her home clean, appropriately furnished and free from hazards. Mother claimed she lived there alone, although Christopher's foster parent reported that mother continued to have contact with Carlos Z. Mother claimed the male seen at her home was a male cousin of hers who stayed there when she was not home because her home had been vandalized.

At the 12-month review October 1, 2014, the court again continued reunification services for mother and father. The court ordered an 18-month permanency hearing be scheduled prior to March 6, 2015. In early November 2014, Christopher began extended visits with mother.

On January 27, 2015, the department filed a section 388 request to change the visitation order from extended to supervised visits. According to the department, mother was not in compliance with services, as she failed to show for a staffing with a substance abuse specialist. Also, mother's probation officer did a walk-through of mother's home on January 8, 2015, and discovered "multiple items which belong to an adult male." Mother was confronted with the suspicion that she was maintaining contact with

Carlos Z., despite being advised that she was not to allow him around Christopher. Mother eventually acknowledged she was three mother's pregnant with Carlos Z.'s child.

The section 388 hearing was scheduled for a settlement conference March 25, 2015, and a contested 18-month review set for the same day.

At the March 25, 2015 hearing, county counsel stated a settlement agreement had been made with mother that she be allowed a supervised visit once a week until the section 366.26 hearing. Mother's counsel submitted on the 18-month report, but noted a "placement change" may be needed for Christopher, as mother was requesting her mother, maternal grandmother, and mother's sister be assessed for placement. Counsel "believe[d]" maternal grandmother had "started the process" with the department and provided some paperwork, and mother's sister would do so shortly. When asked by the court if counsel had provided that information to the department, counsel stated she would have to obtain that information from mother and direct her to do so. Counsel noted maternal grandmother was present at the hearing.

The court granted the department's section 388 petition and ordered weekly, supervised visits for mother. The court then found mother's progress had been minimal and return of Christopher to her care would create a risk of detriment, and continued placement was necessary. The court terminated reunification services and set a section 366.26 hearing for July 15, 2015.

Mother filed a notice of intent to file a writ petition March 30, 2015, which this court later dismissed on May 6, 2015 as abandoned.

In the July 15, 2015 report prepared in anticipation of the section 366.26 hearing, the department reported that, after the March 25, 2015 hearing, mother participated in three visits with Christopher; mother did not appear for two other visits and two visits were cancelled by the care provider. The social worker described mother's visits with Christopher as demonstrating limited structure. The department alleged that Christopher

did not look to mother to meet his daily needs and that termination of mother's parental rights would not be detrimental to him.

The report stated Christopher had had weekly supervised visits with his parental grandmother and monthly supervised visits with his maternal grandmother, which Christopher seemed to enjoy. While paternal grandmother submitted an application in March 2015 for placement of Christopher, she had not followed through to complete the relative home approval process. In late June 2015, paternal grandmother reported that she was unable to take placement of Christopher and that she was supportive of the care providers taking permanent placement to adopt him.

Also, on June 24, 2015, mother stated she supported adoption of Christopher by his current care givers, who would maintain birth family contacts for Christopher via in person visits, updates and pictures. Christopher had been with his current care givers since his initial placement in September 2013, followed by short stays with relatives and his parents, and then returned to the initial home January 30, 2015. His current caregivers provided a structured and consistent home environment for Christopher and wished to adopt him.

The department assessed Christopher as adoptable. He was healthy, smart and well adjusted. He was developmentally on target except for a mild speech delay. He had been participating in weekly individual therapy, due to anxiety, but was progressing.

At the scheduled section 366.26 hearing July 15, 2015, counsel for mother, who was not present due to transportation issues, disagreed with the report's assertion that mother was in agreement with the adoption assessment and asked for a contested hearing. A contested hearing was set for September 2, 2015.

At the contested section 366.26 hearing September 2, 2015, mother's counsel objected to the termination of parental rights. Counsel stated mother was not objecting to the adoptability of Christopher, but "whether or not there was a deficient assessment in preparation of the .26 report and whether it meets the statutory obligations as having

evaluated all of the relevant criteria.” When asked if she had any new evidence, counsel stated, “It’s before you in terms of the report. We are objecting as to the adequacy of the report and whether it meets the obligations. So yes, we are submitting on the report.”

County counsel argued the department properly assessed “all relatives who have come forward and requested visitation or requested placement,” namely paternal grandmother. According to counsel, there was no evidence presented that maternal grandmother had an approved home or applied for placement, or that the department was lacking in any of its analysis.

Counsel for Christopher argued the report was sufficient and there was no deficiency in analyzing relative placement. According to counsel, in her experience, “individuals who want to get relative placement ... step up and ask for that action to occur and then participate in the process called the home approval process.” While counsel acknowledged maternal grandmother had been at the hearings “now and then” and had “some relationship” with Christopher, there was no request to have the child placed with her and she did not participate in any type of analysis through the placement process. Counsel also noted that the argument was “a little too late,” because there were opportunities to litigate the issue before the current hearing. Counsel stated:

“So I think that the individuals that were interested in getting placement of Christopher went through the process and disqualified themselves or deselected themselves for their own personal reasons but I don’t see anything in the report or in the information that was provided that that was the case for the maternal grandmother.”

Mother’s counsel then argued that they were primarily objecting to the department’s failure to assess maternal grandmother and the ongoing relationship and contact with that family member in the preparation of the .26 report. Counsel stated:

“... [W]e would argue that the point of that assessment of contact is to determine whether or not there exists bonds and relationships that would be beneficial to the minor to maintain and which might allow for alternatives to adoption by nonrelative care providers.”

Mother's counsel argued maternal grandmother had been present "on and off" throughout the proceedings; she had been in contact with the department; she had an ongoing relationship with Christopher; and she had requested to be evaluated for adoption. Counsel stated maternal grandmother requested adoption, but was advised she was ineligible by the department. Mother's counsel noted the denial "came in a verbal form with nothing that could be presented in terms of an actual denial or an appeal of a denial and no evaluation ... in the .26 report as we believe is required."

Mother's counsel then argued it was in Christopher's best interest to maintain contact with maternal grandmother and his extended family. Counsel asked that the court "require ... the department [to] make the statutory evaluation of the maternal grandmother in terms of the contact ... that existed between the minor and the maternal grandmother throughout this process leading up to this hearing."

County counsel countered that mother provided no evidence to show that the department didn't assess maternal grandmother and provided no evidence she even applied for placement. Counsel argued the department's assessment was sufficient and properly analyzed "the relative who did come forward and requested placement as well as the main focus of assessing the child's general adoptability as well as the child's bond with the mother."

The court then found clear and convincing evidence Christopher was likely to be adopted and adoption was the appropriate permanent plan. In regards to the issue raised by mother on the lack of information in the assessment with regards to extended family, the court found the report included an assessment of Christopher's relationship or contact with the paternal grandparent but was "silent as to all other relatives." The court was not sure whether this was due to the fact that there was no information to report or whether the department neglected to do so. The court surmised, however, that there was "no legal authority to indicate that lacking an evaluation of the amount of the nature of contact

between the child and his or her extended family somehow invalidates the remaining analysis and evidence to support adoption.”

The court then noted that mother’s counsel asserted a number of facts that were not supported by evidence presented to the court: no evidence of maternal grandmother’s regular contact with the department and no evidence of an ongoing relationship between maternal grandmother and Christopher, including regular and consistent contact and visits with Christopher. The court also noted there was no evidence maternal grandmother ever requested to be evaluated for placement and/or assessment, not in the current section 366.26 report or in the previous six- and twelve-month review reports, lending credibility to the department’s insistence that maternal grandmother made no such request. While the court agreed with mother’s counsel that the department should have included an assessment of contact between Christopher and his extended family, “mother’s attorney didn’t provide any evidence to support the allegation or the assertions made in argument regarding the maternal grandmother’s relationship, contact, and request for placement and/or assessment for a permanent plan for the minor.”

Mother’s counsel then asked that, before the court make its finding, she be allowed additional time to gather the evidence “the [c]ourt has requested” and reopen mother’s case. The court stated, however, not that it had not requested any other evidence and would make its ruling based on the evidence before it.

Mother’s counsel then interjected that mother had just informed her she had “the application for approval” in her possession. The court stated it had already given the parties an opportunity to present evidence, there was an indication by the parties that there was no other evidence, and the matter was therefore submitted.

The court then again found Christopher adoptable, that adoption was the appropriate plan, and terminated mother’s parental rights.



## DISCUSSION

### ***1. Adoption Assessment Report and Request for Continuance***

While mother does not contest the court's finding that Christopher was adoptable, she argues the department's section 366.26 assessment report was inadequate because it "failed to assess Christopher's contact with his extended family." Specifically, mother contends the report makes no mention of maternal grandmother's home approval application and the court erred when it denied her request to present such evidence or for a continuance to reopen mother's case to present that evidence.

We first address mother's claim that the assessment report failed to comply with statutory requirements. Prior to a section 366.26 hearing, the department and the licensed county adoption agency are required to prepare "an assessment" that includes, among other matters, a review of the child's contacts with his or her parents and other members of his or her extended family, an evaluation of the child's medical, developmental, and emotional status, a preliminary assessment of any prospective adoptive parent, and an analysis of the likelihood that the child will be adopted. (§§ 361.5, subd. (g) [referral from disposition]; 366.21, subd. (i) [referral from 6- and 12-month review hearings], 366.22, subd. (b) [referral from 18-month review hearing]; 366.3, subd. (h) [referral from post permanency plan review]; *In re Valerie W.* (2008) 162 Cal.App.4th 1, 11 (*Valerie W.*)). The content of an assessment report is the same no matter when the referral is made. (*Ibid.*)

When a parent challenges the assessment report as inadequate, the reviewing court evaluates any deficiencies in the report in view of the totality of the evidence in the record. (*In re Michael G.* (2012) 203 Cal.App.4th 580, 590-593.) Any deficiencies in the report go to the weight of the evidence and may prove insignificant unless they are so egregious as to undermine the court's permanent plan decision. (*Valerie W.*, *supra*, 162 Cal.App.4th at pp. 14-15; *In re Crystal J.* (1993) 12 Cal.App.4th 407, 413.)

Here, the assessment report stated Christopher had weekly unsupervised visits with his paternal grandmother, who subsequently decided against seeking adoption of Christopher. According to the report, the only contact Christopher had with his maternal grandmother was a “once a month supervised visit.” There was no evidence before the court that Christopher had a substantial relationship with maternal grandmother or that she would be considered as a possible placement. Even as early as detention in September 2013, paternal grandmother was the only relative considered for placement. At that time, mother described Christopher as having a close bond with paternal grandmother and mother had no concerns regarding Christopher’s safety or well being if placed in paternal grandmother’s care. In contrast, mother described her relationship with maternal grandmother as not positive, that maternal grandmother was in a residential substance abuse program, and would not be an appropriate placement for Christopher. Although mother later claimed, in July 2014, that maternal grandmother was part of her support system with whom she and Christopher spent time, she made no mention at that time of maternal grandmother being a possible placement for Christopher.

In March 2015, at the time the section 366.26 hearing was set, mother’s counsel stated mother was requesting her mother and sister be assessed for placement. Counsel stated she “believe[d] her mother has started the process with the Department and provided some paperwork, and her sister will do so shortly.” However, other than that statement by counsel, the court noted during the September 2015 section 366.26 hearing that there was no evidence maternal grandmother ever requested to be evaluated for placement and/or assessment, not in the current section 366.26 report or in the previous six- and twelve-month review reports, lending credibility to the department’s insistence that maternal grandmother made no such request.

In sum, there was no evidence before the court that the missing assessment of Christopher’s relationship with his maternal grandmother or any other relative was sufficiently egregious to undermine the basis of the court’s decision. We therefore

conclude that mother has failed to show that the adoption assessment was not in substantial compliance with the applicable statutory requirements.

We therefore also find the court did not err when it denied mother's request to submit additional evidence or for a continuance of the section 366.26 hearing to allow the department to investigate maternal grandmother for possible placement.

Section 352, subdivision (a) provides that if it is not contrary to the interests of the minor child, a court may grant a continuance in a dependency case for good cause shown, for the period of time shown to be necessary, and further provides that when considering whether to grant a continuance, the court "shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements." The court's ruling on whether a request for a continuance came within those guidelines is reviewed for abuse of discretion. (*In re B.C.* (2011) 192 Cal.App.4th 129, 143-144.)

Mother argues, in essence, that the court abused its discretion because a continuance would have allowed the court to receive information regarding maternal grandmother's possible relationship with and request for placement of Christopher and, after an investigation, reach the possible conclusion that the placement with maternal grandmother was in the child's best interest.

We find mother has failed to make a showing of good cause for a continuance of the section 366.26 hearing. Our Supreme Court has stated that "the sole purpose of the section 366.26 hearing is to select and implement one of the listed permanent plans." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 304.) At the section 366.26 hearing, the court does not have the option of removing the child from the current foster home and placing the child with a relative with whom the child is not presently residing, since that is not one of the plans listed in the statute. (See § 366.26, subd. (b)(1)-(7);<sup>3</sup> (c)(4)(A) & (B).) Here,

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<sup>3</sup> We note that subd. (b)(6) was added to section 366.26 effective January 1, 2016.

mother's request sought a continuance in order to obtain a possible change of placement to the maternal grandmother, with whom the child did not reside. Her request therefore failed to show good cause for continuance of the section 366.26 hearing, since the hearing was set for the proper purpose of determining whether parental rights should be terminated and determining a permanent plan.

Moreover, the court determined that a continuance would be contrary to the best interest of Christopher in moving toward a permanent plan, which was consistent with the factors set forth in section 352, subdivision (a) for ruling on a request for a continuance: "The court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements." We therefore conclude that the mother has not shown that the court abused its discretion in denying her request for a continuance of the section 366.26 hearing.

## ***2. Beneficial Relationship Exception to Adoption***

Mother also contends the court erred when it found the section 366.26 subdivision (c)(1)(B)(i) beneficial parent-child relationship exception to termination of parental rights did not apply. We disagree.

As stated previously, at a hearing under section 366.26, the court must select and implement a permanent plan for a dependent child. Where there is no probability of reunification with a parent, adoption is the preferred permanent plan. (*In re K.P.* (2012) 203 Cal.App.4th 614, 620 (*K.P.*)) To implement adoption as the permanent plan, the court must find, by clear and convincing evidence, that the child is likely to be adopted if parental rights are terminated. (§ 366.26, subd. (c)(1).) Then, in the absence of evidence that a relative guardianship should be considered (§ 366.26, subd. (c)(1)(A)) or that termination of parental rights would be detrimental to the child under one of six statutory-

specified exceptions (§ 366.26, subd. (c)(1)(B)(i)-(vi)), the court “shall terminate parental rights.” (§ 366.26, subd. (c)(1).)

Section 366.26, subdivision (c)(1)(B)(i) provides that the court may decline to terminate parental rights if it “finds a compelling reason for determining that termination would be detrimental to the child” because “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” A beneficial parent-child relationship within the meaning of section 366.26, subdivision (c)(1)(B)(i) is one that “ ‘promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.’ ” (*K.P.*, *supra*, 203 Cal.App.4th at p. 621.) To establish the exception, “the parent must do more than demonstrate ‘frequent and loving contact’ [citation], an emotional bond with the child, or that the parents and child find their visits pleasant. [Citation.] Rather, the parents must show that they occupy ‘a parental role’ in the child’s life.” (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108-1109.) Furthermore, “ ‘[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.’ ” (*K.P.*, *supra*, 203 Cal.App.4th at p. 621.)

The parent has the burden of proving the statutory exception applies. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 826.) The court’s decision a parent has not satisfied this burden may be based on either or both of two component determinations – whether a beneficial parental relationship exists and whether the existence of that relationship constitutes “a compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B); see *K.P.*, *supra*, 203 Cal.App.4th at p. 622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314 (*Bailey J.*).) When the court finds the parent has not established the existence of the requisite beneficial relationship, our review is limited to determining whether the evidence compels a finding in favor of

the parent on this issue as a matter of law. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527-1528.) When the court concludes the benefit the child derived from preserving parental rights is not sufficiently compelling to outweigh the benefit achieved by the permanency of adoption, we review that determination for abuse of discretion. (*K.P.*, *supra*, 203 Cal.App.4th at pp. 621-622; *Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315.)

We find mother has forfeited the issue of whether the parent-child relationship exception applied by failing to raise the issue below. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 221-222; *In re Erik P.* (2002) 104 Cal.App.4th 395, 402-403.) But even if the issue has not been forfeited, there is no basis for concluding mother met her burden of establishing a parent-child relationship exception. Here, the facts show that, despite receiving some substance abuse and domestic violence treatment, and despite advancing in visitation with Christopher all the way to extended visits during which Christopher resided with mother for over two months, mother was not able to make progress or demonstrate a benefit from the services. She was also unwilling to abandon a relationship that was arguably harmful to her and that jeopardized Christopher's safety.

In addition, there is little evidence of a bond between mother and Christopher. Mother did not consistently attend visits, often cancelling or not showing up for the visits. As stated in the section 366.26 report, mother "does not have a parent/child relationship with Christopher as she has failed to maintain a consistent contact . . . ." In contrast, Christopher looked to his care providers for his daily needs and did well in their home because he "thrives in a structured and consistent home."

Mother has failed to show the parent-child relationship exception applied here, and we reject her claim to the contrary.

#### DISPOSITION

The order is affirmed.

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GOMES, J.

WE CONCUR:

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HILL, P.J.

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DETJEN, J.